

Serial No. **45863**

APPLICATION FOR PERMISSION TO CHANGE POINT OF DIVERSION, MANNER  
OF USE AND PLACE OF USE OF THE PUBLIC WATERS OF THE  
STATE OF NEVADA HERETOFORE APPROPRIATED

Date of filing in State Engineer's Office JUN 21 1982 NEW PRIORITY DATE: AUG 16 2007

Returned to applicant for correction.....  
Corrected application filed..... Map filed.....  
March 12, 1973 under 27127  
January 12, 1978 under 34866

The applicant The Town of Kingston  
c/o Ralph Watson, Kingston Canyon of Austin  
Street and No. or P.O. Box No. City or Town  
Nevada 89310  
State and Zip Code No. hereby make application for permission to change the  
point of diversion

Point of diversion, manner of use, and/or place of use  
of water heretofore appropriated under Permit #34866  
(Identify existing right by Permit, Certificate, Proof or Claim Nos. If Decreed, give title of Decree and  
identify right in Decree.)

- The source of water is Big Smokey Creek  
Name of stream, lake, underground spring or other source.
- The amount of water to be changed 1.35 c.f.s.  
Second feet, acre feet. One second foot equals 448.83 gallons per minute.
- The water to be used for quasi-municipal and domestic  
Irrigation, power, mining, industrial, etc. If for stock state number and kind of animals.
- The water heretofore permitted for quasi-municipal and domestic  
Irrigation, power, mining, industrial, etc. If for stock state number and kind of animals.
- The water is to be diverted at the following point SW $\frac{1}{4}$  NW $\frac{1}{4}$  Sec. 36 T16N R43E MDB&M or at a point  
Describe as being within a 40-acre subdivision of public survey and by course and  
from which the NE corner of said Sec. 36 bears N68°53'55"E a distance of  
distance to a section corner. If on unsurveyed land, it should be stated.  
5148.32 feet.
- The existing permitted point of diversion is located within NE $\frac{1}{4}$ NE $\frac{1}{4}$  Sec. 35 T16N R43E MDB&M or at  
If point of diversion is not changed, do not answer.  
a point from which the NE corner of said Sec. 35 bears N44°56'E a distance  
of 1550 feet.
- Proposed place of use E $\frac{1}{2}$ NE $\frac{1}{4}$  SEC. 35, S $\frac{1}{2}$ NW $\frac{1}{4}$ , S $\frac{1}{2}$ NE $\frac{1}{4}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$ , N $\frac{1}{2}$ SE $\frac{1}{4}$  Sec. 36 T16N R43E,  
Describe by legal subdivisions. If for irrigation state number of acres to be irrigated.  
S $\frac{1}{2}$ NW $\frac{1}{4}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$ , N $\frac{1}{2}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ NE $\frac{1}{4}$ , Sec. 31, SE $\frac{1}{4}$ SE $\frac{1}{4}$ , Sec. 30, SW $\frac{1}{4}$ SW $\frac{1}{4}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ ,  
W $\frac{1}{2}$ NE $\frac{1}{4}$  Sec. 29 T16N R44E MDB&M
- Existing place of use same as number 7  
Describe by legal subdivisions. If permit is for irrigation, state number of acres irrigated. If changing place of use and/or  
manner of use of irrigation permit, describe acreage to be removed from irrigation.
- Use will be from January 1 to December 31 of each year.  
Month and Day Month and Day
- Use was permitted from January 1 to December 31 of each year.  
Month and Day Month and Day
- Description of proposed works. (Under the provisions of NRS 535.010 you may be required to submit plans and  
specifications of your diversion or storage works.) infiltration well, storage facilities  
State manner in which water is to be diverted, i.e. diversion structure, ditches,  
and transmission lines  
pipes and flumes, or drilled well, etc.
- Estimated cost of works \$100,000
- Estimated time required to construct works 5 years

14. Estimated time required to complete the application of water to beneficial use.....10 years
15. Remarks: For use other than irrigation or stock watering, state number and type of units to be served or annual consumptive use.

Please use map under 27127 and 34866 to support this application.

By s/Philip T. Marshall  
1475 Terminal Way, Suite C-2  
Reno, Nevada 89502

Compared js/dls ja/br

Protested 7/8/82 by Ross E. de Lipkau, agent for J. Chester Young  
Pro. wdn. 3/21/83

APPROVAL OF STATE ENGINEER

This is to certify that I have examined the foregoing application, and do hereby grant the same, subject to the following limitations and conditions:

This permit to change the point of diversion of the water of Big Smokey Creek, also known as Kingston Creek, as heretofore granted under Permit 34866 is issued subject to the terms and conditions imposed in said Permit 34866 and with the understanding that no other rights on the source will be affected by the change proposed herein. A totalizing meter must be installed near the point of diversion and accurate measurements must be kept of water placed to beneficial use. The water diverted under this permit through the proposed infiltration system will be considered Big Smokey Creek, also known as Kingston Creek, water.

This permit is issued subject to the stipulation executed between J. Chester Young, the Town of Kingston, and the State Engineer, State of Nevada. This stipulation is attached hereto and by this reference made part hereof.

The total combined duty of water under this permit and Permit 38620 shall not exceed 500 acre-feet per year.

The amount of water to be changed shall be limited to the amount which can be applied to beneficial use, and not to exceed.....1.35.....cubic feet per second, but not to exceed 231.8 acre-feet annually.

Work must be prosecuted with reasonable diligence and be completed on or before May 17, 1985

Proof of completion of work shall be filed before June 17, 1985

Application of water to beneficial use shall be made on or before May 17, 1988

Proof of the application of water to beneficial use shall be filed on or before June 17, 1988

Map in support of proof of beneficial use shall be filed on or before June 17, 1988

Completion of work filed SEP 04 1986 IN TESTIMONY WHEREOF, I PETER G. MORROS

Proof of beneficial use filed State Engineer of Nevada, have hereunto set my hand and the seal of my office, this 17th day of MAY

Cultural map filed

A.D. 19 83

Certificate No. Issued

*Peter G. Morros*  
State Engineer

2407 (Rev. 6-84)  
AUG 20 2007  
CANCELLED BECAUSE OF  
FAILURE OF APPLICANT TO COMPLY WITH THE  
PROVISIONS OF PERMIT

Tang P.C. STATE ENGINEER  
Rescinded 9-27-2007

STIPULATION

IT IS HEREBY stipulated between J. CHESTER YOUNG, by and through his attorneys Hill, Cassas, de Lipkau and Erwin; State Engineer PETER G. MORROS, successor in interest to WILLIAM J. NEWMAN, by and through Deputy Attorney General, George Benesch; and the TOWN OF KINGSTON, by and through its attorney, the Honorable Hy Forgeron, District Attorney for Lander County, Nevada, as follows:

1. That all parties named herein are desirous of settling the water conflict to the waters of Kingston Creek and its tributaries, Lander County, Nevada, insofar as the various application and water rights of J. Chester Young and the Town of Kingston are concerned.

2. That J. Chester Young shall, by the execution of this Stipulation, withdraw his protest heretofore filed against the granting of Applications 45863 and 38620, and will not thereafter formally or informally protest said Applications.

3. The State Engineer agrees to approve Applications 45863 and 38620 for a total combined annual duty of 500.0 acre-feet per year. Of that volume, 231.8 acre-feet of water shall be considered surface waters pursuant to Claim No. 02435 of what is commonly known as the "Kingston Creek Decree", and 268.2 acre-feet annually shall be considered ground water.

4. J. Chester Young shall be authorized, without formal or informal protest from any party hereto, to file an application(s) to change the point of diversion of any of his currently existing water rights with Kingston Creek and its tributaries as its source.

5. The requested point of diversion pursuant to any Application filed under Paragraph 4 above shall be identical to

1 Permits 34444, 34445 and 34446. The total annual duty of waters  
2 granted pursuant to any such application to change the point of  
3 diversion shall not exceed 268.2 acre-feet per year.

4 6. The parties are aware that the appeal taken to the  
5 Nevada Supreme Court by Gordon C. Shelley, individually and on  
6 behalf of Syndicated Investors, Ltd., a Nevada corporation, and  
7 Kingston Management Association, Inc., a non-profit Nevada home-  
8 owners association has been withdrawn. This Stipulation is executed  
9 by all parties herein irrespective of the fact the decision of the  
10 Honorable Richard J. Legarza, District Judge, entered October 12,  
11 1982, is binding upon all parties.

12 7. Each party hereto agrees to execute or sign the  
13 necessary additional documents to carry out the purpose and intent  
14 of this Stipulation.

15 8. This Stipulation shall not be effective until the  
16 signatures of all parties named hereto shall be first affixed.

17 9. This Stipulation shall bind all of the parties  
18 hereto, their agents, employees, heirs, successors, assigns and  
19 vendees.

20 10. J. Chester Young agrees that he will not, in the  
21 future, apply for any water or water right held by the Town of  
22 Kingston, whether or not the town shall show beneficial use of any  
23 such water or water right.

24 11. J. Chester Young agrees to allow a sufficient quan-  
25 tity of water to pass by his point of diversion so as to insure  
26 that the town of Kingston shall receive its prior water right,  
27 assigned claim number 02435, being 1.35 cubic feet per second with  
28 an annual duty of 231.8 acre-feet.

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1 Date: 3/21/83

Ross E de Lipkau  
Ross de Lipkau, Esq.  
Hill, Cassas, de Lipkau & Erwin  
Attorneys for Chester Young

2  
3  
4 Date: 3/21/83

George Benesch  
George Benesch, Esq.  
Deputy Attorney General for  
Peter G. Morros  
Successor in interest to  
William J. Newman

5  
6  
7  
8 Date: 3-31-83

Hy Forgeron  
Hy Forgeron, District Attorney  
Attorney for Town of Kingston

9  
10 Date: 3-31-83

D. M. Matteucci  
D. M. Matteucci, Chairman  
Kingston Town Board